

AMENDED IN SENATE JUNE 14, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 16

Introduced by Assembly Member John A. Pérez
(Coauthor: Assembly Member Alejo)

December 3, 2012

An act to amend Section 273.5 of the Penal Code, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

AB 16, as amended, John A. Pérez. Domestic violence: corporal injury.

Under existing law, any person who willfully inflicts corporal injury resulting in a traumatic condition upon a person who is his or her spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child, is guilty of a crime, punishable as specified.

This bill would make those provisions apply to the infliction of that type of injury on the fiancé or fiancée of that person or on someone with whom the person has, or previously had, a dating or engagement relationship. By expanding the scope of a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 273.5 of the Penal Code, as amended by Section 16 of Chapter 867 of the Statutes of 2012, is amended to read:

273.5. (a) Any person who willfully inflicts corporal injury resulting in a traumatic condition upon a victim described in subdivision (b) is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to six thousand dollars (\$6,000) or by both that fine and imprisonment.

(b) Subdivision (a) shall apply if the victim is or was one or more of the following:

(1) The offender's spouse or former spouse.

(2) The offender's cohabitant or former cohabitant.

(3) The offender's fiancé or fiancée, or someone with whom the offender has, or previously had, ~~a dating or an engagement relationship~~ *or dating relationship, as defined in paragraph (10) of subdivision (f) of Section 243.*

(4) The mother or father of the offender's child.

(c) Holding oneself out to be the husband or wife of the person with whom one is cohabiting is not necessary to constitute cohabitation as the term is used in this section.

(d) As used in this section, "traumatic condition" means a condition of the body, such as a wound, or external or internal injury, including, but not limited to, injury as a result of strangulation or suffocation, whether of a minor or serious nature, caused by a physical force. For purposes of this section, "strangulation" and "suffocation" include impeding the normal breathing or circulation of the blood of a person by applying pressure on the throat or neck.

(e) For the purpose of this section, a person shall be considered the father or mother of another person's child if the alleged male parent is presumed the natural father under Sections 7611 and 7612 of the Family Code.

(f) (1) Any person convicted of violating this section for acts occurring within seven years of a previous conviction under subdivision (a), or subdivision (d) of Section 243, or Section 243.4, 244, 244.5, or 245, shall be punished by imprisonment in a county

1 jail for not more than one year, or by imprisonment in the state
2 prison for two, four, or five years, or by both imprisonment and a
3 fine of up to ten thousand dollars (\$10,000).

4 (2) Any person convicted of a violation of this section for acts
5 occurring within seven years of a previous conviction under
6 subdivision (e) of Section 243 shall be punished by imprisonment
7 in the state prison for two, three, or four years, or in a county jail
8 for not more than one year, or by a fine of up to ten thousand
9 dollars (\$10,000), or by both that imprisonment and fine.

10 (g) If probation is granted to any person convicted under
11 subdivision (a), the court shall impose probation consistent with
12 the provisions of Section 1203.097.

13 (h) If probation is granted, or the execution or imposition of a
14 sentence is suspended, for any defendant convicted under
15 subdivision (a) who has been convicted of any prior offense
16 specified in subdivision (f), the court shall impose one of the
17 following conditions of probation:

18 (1) If the defendant has suffered one prior conviction within the
19 previous seven years for a violation of any offense specified in
20 subdivision (f), it shall be a condition thereof, in addition to the
21 provisions contained in Section 1203.097, that he or she be
22 imprisoned in a county jail for not less than 15 days.

23 (2) If the defendant has suffered two or more prior convictions
24 within the previous seven years for a violation of any offense
25 specified in subdivision (f), it shall be a condition of probation, in
26 addition to the provisions contained in Section 1203.097, that he
27 or she be imprisoned in a county jail for not less than 60 days.

28 (3) The court, upon a showing of good cause, may find that the
29 mandatory imprisonment required by this subdivision shall not be
30 imposed and shall state on the record its reasons for finding good
31 cause.

32 (i) If probation is granted upon conviction of a violation of
33 subdivision (a), the conditions of probation may include, consistent
34 with the terms of probation imposed pursuant to Section 1203.097,
35 in lieu of a fine, one or both of the following requirements:

36 (1) That the defendant make payments to a battered women's
37 shelter, up to a maximum of five thousand dollars (\$5,000),
38 pursuant to Section 1203.097.

(2) (A) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

(B) For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under this subdivision, the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. ~~Where~~ *If* the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

(j) Upon conviction under subdivision (a), the sentencing court shall also consider issuing an order restraining the defendant from any contact with the victim, which may be valid for up to 10 years, as determined by the court. It is the intent of the Legislature that the length of any restraining order be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family. This protective order may be issued by the court whether the defendant is sentenced to state prison, county jail, or if imposition of sentence is suspended and the defendant is placed on probation.

(k) If a peace officer makes an arrest for a violation of this section, the peace officer is not required to inform the victim of his or her right to make a citizen's arrest pursuant to subdivision (b) of Section 836.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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